

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>CHRISTOPHER RIMKUS,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DENVER COUNTY BOARD OF COMMISSIONERS.</b></p>	<p><b>Docket No.: 62643</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on January 27, 2014, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Charles T. Solomon, Esq. Petitioner is protesting the 2012 classification of the subject property.

Subject property is described as follows:

**924 South Race Street, Denver, Colorado  
Denver County Schedule No. 05144-18-004-000**

The subject is a 6,300 square foot site located in an established residential area east of Washington Park. The original structure was demolished in December of 2011 and a new residence built by mid-summer of 2012.

Respondent assigned vacant land classification for tax year 2012. Petitioner is requesting residential classification.

Mr. Rimkus argued that vacant land classification based on actual use was unfair and punitive. His intent was completion of residential construction by mid-summer of 2012, which he accomplished. The process included moving into a rental property, hiring an architect and engineer, waiting three weeks for demolition due to snowstorms, beginning foundation work, which was halted by another snowstorm, installing temporary electric service, removing fencing and a tree, completing the foundation, beginning construction, and receiving a Certificate of Occupancy on July 1, 2012. Bad weather and a snow-covered site affected the time line. Guidelines should address external factors and not be so rigid.

Respondent's witness, Jonathan Norloff, Registered Appraiser, quoted the Assessor's Reference Library (ARL).

"Property is classified according to its actual use on January 1" (ARL, Vol. 2, Ch. 6.1).

"A completed structural foundation must be in place as of January 1 for the property to be reclassified from vacant land" (ARL, Vol. 2, Ch. 6.9).

"Partially completed structures are valued based on the percentage completed as of January 1". A complete foundation equals 10%. (ARL, Vol. 2, Ch. 1.17).

Based on inspection, Mr. Norloff concluded that the foundation was completed on January 9, 2012 and, therefore, was incomplete as of January 1.

Sufficient probative evidence and testimony was presented to prove that the subject property should be reclassified for tax year 2012.

The Board reviewed the time line at issue: the existing house was purchased in June of 2011; application for a demolition permit was made on November 23, 2011 and finalized on December 20, 2011; Kenneth Drybread (Assessor's Office) inspected the property on December 16, 2011, changing classification to vacant land; the house was demolished, the site was excavated, and caissons and footings were installed in December of 2011; the foundation was completed on January 9, 2012 following snowstorms that causes delays. The Board is persuaded that the property did not lose its residential classification; the short period between demolition and new construction of the new improvement is found to be transitional.

The Board supports adherence to the ARL but finds conflicting guidelines that refer both to intended use (ARL, Vol. 2, Ch. 3.12) and actual use (ARL, Vol. 2, Ch. 6.1). While the subject property does not meet the 10% guideline for completion of the foundation, Petitioner's obvious intent was residential construction.

The Board is persuaded by Ch. 3.12 of the Vol. 2 ARL: "Incomplete improvements, including foundations, are assessed according to their status as of the assessment date and are to be classified according to their *intended* use when completed." (Emphasis added). The Board finds that the subject's intended use was always residential.

Further, the ARL Vol. 2, Ch. 6.9 addresses structures destroyed by natural causes, stating that intent is the basis for classification. While the subject property is not an example of a destroyed structure, completion of the foundation was impacted by weather (natural occurrence). The Board is convinced that construction was in place in late 2011 until completion in mid-summer of 2012.

The Board, in response to Respondent's reference to Joseph G. Beeler and Theresa A. Kiss v. Property Tax Administrator (PTA) (BAA Docket No. 47469), notes two differences. First, the

reason for the Beeler/Kiss construction delay was the approval process by the City of Broomfield, not natural causes. The County's approval process is inherent in the construction process, not unlike time frames for architectural drawings and engineering reports. While the two cases have similarities, the Board finds the delay issues are different. Second, the Board finds that in Docket No. 47469, the construction of the residence did not begin until several months after the January 1 assessment date, whereas in this case, the construction began in December of the year preceding the January 1 assessment date and continued through the assessment date until the completion of the residence in mid-summer of 2012.

**ORDER:**

Respondent is ordered to reclassify the subject property to residential for tax year 2012.

The Denver County Assessor is directed to change his/her records accordingly.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 6th day of February, 2014.

BOARD OF ASSESSMENT APPEALS

*Diane M DeVries*

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Diane M. DeVries

*MaryKay Kelley*

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MaryKay Kelley

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*Milla Lishchuk*

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Milla Lishchuk

